

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

CORIANTE L. PIERCE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:20CV711
	)	
LINDSEY SPAIN, et al.,	)	
	)	
Defendants.	)	

**ORDER**

This matter is before this court for review of the Order and Recommendation ("Recommendation") filed on December 1, 2020, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 4.) In the Recommendation, the Magistrate Judge recommends that this action be dismissed sua sponte without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms. The Recommendation was served on the parties to this action on December 1, 2020. (Doc. 5.) On December 28, 2020, Plaintiff filed a letter requesting an extension to respond to the Recommendation, (Doc. 6); objections to the Recommendation, (Doc. 7); a request for a certificate of appealability, (Doc. 8); and a premature Notice of Appeal, (Doc. 9), which the court will construe as objections to the Recommendation. The court

will grant Plaintiff's motion for extension of time and will treat Plaintiff's objections as timely filed.

Plaintiff has also requested a certificate of appealability and filed a Notice of Appeal. However, Plaintiff's claims in this case are brought pursuant to 42 U.S.C. § 1983, which does not fall within the scope of the certificate of appealability requirements of a habeas action. 28 U.S.C. § 2253. Moreover, this Order simply directs Plaintiff to clearly re-state his claims on the proper § 1983 forms. In his objections, Plaintiff contends that he did not receive forms and instructions from the Clerk's Office. Therefore, the court will direct the Clerk to re-send Plaintiff § 1983 forms, instructions, an application to proceed in forma pauperis, and a copy of the pertinent parts of Fed. R. Civ. P. 8 (i.e., Sections (a) & (d)).

This court is required to "make a de novo determination of those portions of the [Magistrate Judge=s] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objection was made, has made a de novo

determination which is in accord with the Magistrate Judge's Recommendation, and finds Plaintiff's objections do not change the substance of the Recommendation, (Doc. 4). This court therefore adopts the Recommendation.

**IT IS THEREFORE ORDERED** that the Magistrate Judge's Recommendation, (Doc. 4), is **ADOPTED**. **IT IS FURTHER ORDERED** that this action is dismissed without prejudice to Plaintiff filing a new complaint, on the proper forms, setting out the basis for whatever claims he intends to pursue.

**IT IS FURTHER ORDERED** that Plaintiff's motion for extension of time, (Doc. 6), is **GRANTED** and that Plaintiff's objections, (Doc. 7), are deemed timely filed.

**IT IS FURTHER ORDERED** that Plaintiff's request for a certificate of appealability, (Doc. 8), is **DENIED**.

**IT IS FURTHER ORDERED** that the Clerk is directed to re-send Plaintiff § 1983 forms, instructions, an application to proceed in forma pauperis, and a copy of the pertinent parts of Fed. R. Civ. P. 8 (i.e., Sections (a) & (d)).

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 29th day of April, 2021.

  
United States District Judge